



# N.C. ETHICS COMMISSION

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## ANNUAL ADVISORY OPINION NEWSLETTER

Below is a table summarizing 2014 Formal Advisory Opinions issued by the State Ethics Commission interpreting the Ethics Act and Lobbying Law. The complete opinions, are available on the Commission’s web site under Advisory Opinions: <http://www.ethicscommission.nc.gov/ao/default.aspx>. Although all advice issued by the Commission or its staff is confidential, requesters may waive confidentiality and authorize the release of unedited advisory opinions. G.S. 138A-13(e) and 120C-102(d).

These summaries are for general information and guidance purposes only. Anyone who has a specific question or who would like to request advice or a formal advisory opinion regarding their particular situation should contact the State Ethics Commission. Contact information and instructions are provided below.

### SUMMARY OF THE STATE ETHICS COMMISSION’S 2014 FORMAL ETHICS ADVISORY OPINIONS

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
Gifts and Gift Ban Exceptions	G.S. 138A-32(c); 138A-32(d); 120C-303(a); and 138A-32(e)(3)(i).	E-14-001	<p><b>Paying Expenses of Legislators to Participate in the 2014 “Global Leaders Program to Germany: Focus-Advanced Manufacturing, Workforce Training, and Innovation”</b></p> <p>The Center for International Understanding asked whether it would be permissible for lobbyist principals to pay the trip-related costs of legislators and public servants participating in its 2014 Germany Trip. This opinion requires the application of the educational meeting and reimbursement exception to the Ethics Act’s gift ban.</p> <p>The Center may also receive donations from businesses that are doing business with or are regulated by various State agencies (generally referred to as “interested persons”). However, in order for participating public servants to accept travel expenses from those interested persons, the “reimbursement exception” of the Ethics Act must apply since the educational meeting exception applies only to costs paid by lobbyist principals.</p> <p>The Commission concluded that the 2014 Germany Trip met the educational meeting criteria adopted by the Commission and therefore lobbyist principals may pay for the reasonable actual travel expenses of participating legislators and those legislators may accept the expenses. Since the public servants, if any, who are participating in the trip were not identified, the Commission was unable to determine if the trip was job-related, a requirement</p>

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			of both the reimbursement and meeting exceptions. However, the opinion outlines the standards for applying those exceptions.
Gifts and Gift Ban Exceptions	G.S. 138A-32(c); 138A-3(15); 120C-303(a); 120C-403(b)(1).	E-14-002	<p><b>Permissibility of NCDENR Division of Energy, Mineral &amp; Land Resources Program's Acceptance of Additional American Petroleum Institute Standards</b></p> <p>The Division asked whether API may provide it with a complimentary copy of certain API Technical Standards, valued at \$3,216.00.</p> <p>The Mining and Energy Commission (MEC) has been charged with adopting rules necessary for the administration of the Oil and Gas Conservation Act and for the further development of the State's oil, gas, and mining resources. The members of the MEC and some of the Division staff are public servants subject to the Ethics Act, including the Act's gift ban. API, a registered lobbyist principal, sells a variety of publications that include technical standards applicable to various segments of the oil and gas industry. The Technical Standards will be used by the Division and the MEC in connection with those rulemaking responsibilities.</p> <p>In 2013 the Commission issued a formal advisory opinion which concluded that it was permissible for the Division to accept one complimentary copy of API's Technical Standards on Hydraulic Fracturing, Well Construction, Wellheads, and Well Abandonment in order to assist in the development of proposed rules. Because the more recently requested Technical Standards will also be used in connection with the development of statutorily-required rules, and will not be used for the personal benefit of the Division staff or the MEC members or by the members of the MEC in their private business pursuits, the Commission concluded that the Ethics Act's gift ban would not restrict the Division's acceptance of those Technical Standards from API, and the Lobbying Law would not restrict API from giving those materials to the Division. However, if the materials were given to the Division at the specific request of a public servant and were made for lobbying, API would need to report the fair market value of the materials.</p>
Gifts and Gift Ban Exceptions	G.S. 138A-36; and 138A-38(a)(1).	E-14-003	<p><b>Conflicts of Interest Arising in Connection with the Establishment of Standards Applicable to Licensees Serving on a State Board</b></p> <p>A public servant serving on a State board asked if he/she may take official action in connection with the Board's consideration</p>

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			<p>of certain standards applicable to board licensees under the conflict of interest provisions of the Ethics Act; and what that public servant should do in light of any conflicts of interest identified.</p> <p>The Commission concluded that although it was unclear whether the State board's adoption of the standards would result in a reasonably foreseeable financial benefit to the public servant's business, the public servant may participate in that official action since, if there was such a financial benefit, it would similarly affect many other businesses. Therefore, the public servant may participate in the State board's deliberations and vote on those matters.</p> <p>In addition, the Board's actions in adopting an appeals process and directing the development of rules incorporating these standards would not result in a discernable financial benefit to the public servant's business. The public servant may therefore participate in those official actions.</p>
Conflicts of Interest	G.S. 138A-36; 138A-38(a)(1).	E-14-004	<p><b>Conflicts of Interest Associated With Stock Ownership and Official Actions Taken as a Member of a State Board</b></p> <p>A public servant serving on a State board asked if he/she can take official actions that may affect companies in which the public servant owns stock under the conflict of interest provisions of the Ethics Act.</p> <p>The Commission observed that the value of the Board member's stock interests in one company did not meet the \$10,000 threshold value for triggering the conflict of interest standards of G.S. 138A-36(a). The value of the Board member's stock interests in another company did exceed the \$10,000 threshold. However, the Commission stated that it was unlikely that the public servant's official actions as a member of the State board would result in a reasonably foreseeable financial benefit to the value of the public servant's stock or that companies' overall financial status. Furthermore, the financial impact, if any, would likely similarly affect other companies with similar business interests. Therefore, the Commission concluded that the public servant was not restricted from taking official actions with respect to those matters.</p>
Conflicts of Interest	G.S. 138A-36; 138A-3(14c); 138A-3(27d); 138A-3(3); and 138A-39(a).	E-14-005	<p><b>Conflicts of Interest Associated With Independent Contractor Relationship With Law Firm and Service on State Board</b></p> <p>A public servant serving on a State board asked if the Ethics Act would restrict him/her from serving on and taking official action</p>

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			<p>as a member of a State board if those actions have a financial impact on a company that is a client of a law firm with which the public servant has an independent contractor relationship.</p> <p>The Commission concluded that the Ethics Act would not restrict the public servant from serving on the State board or taking official action regarding matters involving the firm's client, as long as, the firm is not representing the client in those matters. The public servant may, however, be restricted from taking official action if the firm represents the client before the State board, depending upon the particular circumstances.</p>
Restrictions Against Use of Official Title for Advertising/State Funds for PSAs	G.S. 138A-31(c)	E-14-006	<p><b>Use of Photographs Produced With State Resources on Private Website, in E-Mails, and on Social Media Venues</b></p> <p>A public servant asked whether he/she may use several photographs taken of the public servant on State property and/or with the use of State equipment, resources, and/or personnel in the normal course of conducting State business. The public servant wants to use those images on a private website, in emails, and in social media venues. The public servant points out that those images are readily accessible for use by members of the public.</p> <p>G.S. 138A-31(c) restricts the use of State funds for the purpose of producing, distributing, or broadcasting advertisements or public service announcements in a newspaper or magazine, on radio or television, or on billboards. The Commission has construed State funds to include various State resources. However, G.S. 138A-31(c) does not restrict the use of State funds for advertisements publicized on the Internet.</p> <p>Although the images were produced using State property, materials, equipment, and/or personnel, the public servant only intended to use them on the Internet as described. Therefore 31(c) would not restrict the intended use of the images.</p>

**SUMMARY OF THE STATE ETHICS COMMISSION'S  
2014 LOBBYING LAW FORMAL ADVISORY OPINIONS**

CATEGORY	AUTHORITY	AO #	TITLE & SUMMARY
Lobbying and Registration Requirements	G.S. 120C-100(a); 120C-200(a); and 120C-304(c).	L-14-001	<p><b>The Application of the Lobbying Law's "Cooling Off" Period to Former Legislative Employee</b></p> <p>An organization asked if a recently-hired employee may register as a lobbyist. The employee was formerly employed by the General</p>

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			<p>Assembly.</p> <p>G.S. 120C-304(c) provides that “no other employee of any State agency” may register as a lobbyist “to lobby the State agency that previously employed the former employee within six months after voluntary separation ....” “State agency” is defined as “[a]n agency in the <i>executive</i> branch of the government of this State ....” G.S. 138A-3(30k).</p> <p>Since the General Assembly is not an agency in the executive branch of State government, the Commission concluded that six-month “cooling off” period of 120C-304(c) does not apply to former legislative employees.</p>

## HOW TO REQUEST INFORMAL ADVICE OR A FORMAL ADVISORY OPINION ON THE ETHICS ACT OR ON THE LOBBYING LAW

**Who can request advice?** Anyone affected by the Ethics Act or Lobbying Law may request informal advice or a formal advisory opinion.

**What can be requested?** Requests for advice must be related to specific questions involving the meaning and application of the Ethics Act and/or Lobbying Law and must relate to real or reasonably anticipated fact settings or circumstances. All requests must also be prospective.

### What is the difference between “informal advice” and a “formal advisory opinion”?

- Informal advice is issued by Commission staff and does not confer immunity. Requests for informal advice may be either verbal or written.
- A formal advisory opinion is issued by the Commission. Reliance on a formal advisory opinion confers immunity from investigation by the Commission or the Secretary of State’s Office. A request for a formal advisory opinion must be in writing.

**Are requests and advisory opinions confidential?** Yes. Requests for advice or a formal advisory opinion, and all related documents, are confidential. However, the Commission is required to share unredacted copies of formal advisory opinions with the Secretary of State’s Office and must publish redacted formal advisory opinions on the Commission’s website.

**How do I request informal advice or a formal advisory opinion?** Contact the State Ethics Commission at (919) 715-2071 or by e-mail at [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).